



OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

[Docket ID: OPM-2023-0037]

RIN 3206-AO47

Federal Employees Health Benefits Program: Modification of Effective Date of Coverage for Employees with an Initial Opportunity to Enroll

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) proposes to modify the Federal Employees Health Benefits (FEHB) regulations to allow for coverage to take effect as soon as an employee becomes eligible for coverage under the FEHB Program. This rulemaking is also applicable to the Postal Service Health Benefits (PSHB) Program within the FEHB Program. The proposed changes would allow FEHB and PSHB coverage to become effective at the beginning of the pay period that the employee in pay status has an initial opportunity to enroll. This change would occur when the employee becomes eligible for FEHB or PSHB coverage, provided an appropriate request to enroll is received by the employing office within the initial pay period that the employee becomes eligible.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number and/or Regulation Identifier Number (RIN) and title, by the following method:

- Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the

public is to make these submissions available for public viewing at <https://www.regulations.gov> as they are received, without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Meredith Gitangu, Senior Policy Analyst, meredith.gitangu@opm.gov, (202) 606-2678.

SUPPLEMENTARY INFORMATION:

FEHB Program Background

The FEHB Program was established in 1960 and is the largest employer-sponsored health insurance program in the United States. There are approximately 8.2 million covered individuals in the FEHB Program. Covered individuals, as defined in 5 CFR 890.101, include employees of the Federal Government, annuitants, members of their families, former spouses, and statutorily eligible groups enumerated in 5 U.S.C. 8901; and tribal employees of tribal employers, pursuant to 25 U.S.C. 1647b. Currently, Postal Service employees, Postal Service annuitants, and their family members are also eligible for health benefits under the FEHB Program pursuant to 39 U.S.C. 1005. Section 101 of the Postal Service Reform Act (PSRA) added new section 8903c to chapter 89 of title 5, United States Code, and directed OPM to establish the PSHB Program within the FEHB Program for Postal Service employees, Postal Service annuitants, and their eligible family members. Under 5 U.S.C. 8903c(c)(3), except as otherwise set forth in 5 U.S.C. 8903c, the provisions of chapter 89 “applicable to health benefits plans offered by carriers under section 8903 or 8903a shall apply to plans offered under the” PSHB Program.

Health benefits plans under the FEHB Program cover a wide range of health services including routine physical exams, primary and specialist doctors’ visits, inpatient hospital care, surgery, laboratory and diagnostic tests, prescription drugs, and mental health services. Required benefits are listed in broad categories in the FEHB statute at 5 U.S.C. 8904 and include hospital benefits, surgical benefits, medical care and treatment, and obstetrical benefits, among others.

The benefits, coverage, and premium details of each plan in the FEHB Program are negotiated with OPM each year.

Authority for this Rulemaking

OPM administers the FEHB Program in accordance with Title 5 Chapter 89, United States Code and implementing regulations (5 CFR parts 890 and 892 and 48 CFR chapter 16). The authority to modify the effective coverage date for employees with an initial opportunity to enroll is under OPM's authority at 5 U.S.C. 8913 to prescribe regulations necessary to carry out administration of the FEHB Program. Based on agency feedback and OPM's own analysis, which are discussed in more detail in the next section, we are proposing changes to regulations that would allow for coverage to be effective sooner for eligible employees and act as a recruitment and retention tool that positions the Federal Government as a model employer.

Discussion of the Proposed Changes

Modification of Effective Date of Coverage for Employees with an Initial Opportunity to Enroll.

OPM proposes to modify its FEHB enrollment regulations regarding the effective date of coverage for employees with an initial opportunity to enroll. An initial opportunity to enroll is the time period in which employees are allowed to elect enrollment in FEHB and may occur in the following circumstances: as a new employee, when an employee changes from an excluded position to a position eligible for FEHB coverage, or a temporary employee who completes one year of service and is eligible to enroll under 5 U.S.C. 8906a. Currently, under 5 CFR 890.301(a), an employee "may elect to enroll or not enroll [in FEHB] within 60 days after becoming eligible" for FEHB coverage. Coverage is effective on the first day of the first pay period that begins after the date the employing office receives an appropriate request to enroll, and that follows a pay period that the employee is in pay status as described in 5 CFR 890.301(b). OPM is proposing to allow newly eligible employees the opportunity to have their FEHB coverage effective at the beginning of the pay period the employee becomes eligible, provided they are in pay status; have an initial opportunity to enroll in FEHB coverage; and have

submitted, with their employing office having received, an appropriate request to enroll in FEHB coverage during that first pay period of eligibility. An appropriate request is defined in 5 CFR 890.101(a) as a properly completed health benefits election form, such as Standard Form 2809, or an alternative method acceptable to both the employing office and OPM.

In 5 CFR 890.101, a pay period is defined as “the biweekly pay period established pursuant to section 5504 of title 5, United States Code, for the employees to whom that section applies and the regular pay period for employees not covered by that section.” Across most Federal agencies, the general standard is for two-week pay periods to begin on Sunday and run until Saturday of the following week. Recognizing there may be some variance in agency approaches and seeking to ensure an equitable application of the rule to employees, OPM seeks comments on current business processes to effectuate and document an employee’s entry on duty. For example, what is the process if a new employee arrives for orientation on Monday, August 28, 2023, and the start of the pay period is Sunday, August 27, 2023?

Changes proposed in this rulemaking, if finalized, would be required to be applied by the employing office to all employees with an initial opportunity to enroll, not solely to new employees or only on an individual, case-by-case basis. For example, if an employing office receives appropriate requests to enroll from two employees with an initial opportunity to enroll within the pay period these employees become eligible, the employing office may not allow one of the eligible employees’ coverage retroactive to the start of the pay period when they become eligible and force the other eligible employee to wait until the first day of the next pay period. All employing offices are required to implement the proposed changes to achieve an equitable result for all eligible employees. OPM seeks comment on this approach to avoid circumstances where employees of one agency could be offered the earliest possible effective date of coverage based on the agency’s capabilities but an employee at another agency is not offered the same effective date of coverage because that agency’s systems and processes are not updated accordingly. OPM also invites comments on any administrative or operational differences in

applying the proposed changes to new employees and other employees with an initial opportunity to enroll (i.e., employee who experiences a qualifying life event).

OPM estimates approximately 230,000 employees with an initial opportunity to enroll submit appropriate requests and are newly enrolled in FEHB each year. The most common example of an employee with an initial opportunity to enroll is in the case of new employees. Another example of an employee with an initial opportunity to enroll would be in the case of an employee excluded from coverage, as described in 5 CFR 890.102(c), who moves from a position that was excluded from coverage to a position that conveys coverage. Using the example of a new employee, under the current regulatory structure, the new employee who submits an FEHB enrollment request on their start date, or sometime during the first pay period the new employee is in pay status, must wait until the first day of the following pay period for FEHB coverage to become effective. A gap in coverage may result if the new employee has not extended previous group coverage under any applicable rules permitting such extension or does not have individual coverage. Gaps in coverage may further result in costly medical expenditures that must be borne by the individual. OPM takes its agency responsibilities under recent Executive Order 14070¹ earnestly and, in furtherance of the E.O. goals, has identified modification of the effective date of FEHB as an action that expands access to quality coverage. The changes proposed in this rulemaking can work to ensure more timely access to health insurance which may in turn assist in reducing financial burdens for care received while uninsured and removing barriers to consistent care for services such as mental health services, vaccines, and contraceptives. OPM believes that permitting health insurance coverage to become effective at the start of employment could reduce the risk of new employees enduring coverage

¹ See E.O. 14070 (available at: <https://www.federalregister.gov/documents/2022/04/08/2022-07716/continuing-to-strengthen-americans-access-to-affordable-quality-health-coverage>).

gaps and potentially costly medical bills associated with such gaps and also act as an attractive recruitment tool in building a well-qualified, robust workforce.

This proposed rule would align the FEHB Program with the practices of some nonfederal employers that provide first-day coverage and the current practices of the Federal Employees' Group Life Insurance (FEGLI) Program. Under FEGLI regulations at 5 CFR 870.501, FEGLI Basic coverage begins on the day the new employee enters on duty in pay status. Health insurance is an influential factor on employee recruitment, retention, and satisfaction, and is a benefit offering critical coverage, in sometimes life or death circumstances; therefore, OPM prioritizes the FEHB Program for proposed effective date changes. This proposed rule would not impact the effective date of coverage for Federal Employees Dental and Vision Insurance Program (FEDVIP) under 5 CFR 894.504 or Federal Long Term Care Insurance Program (FLTCIP) under 5 CFR 875.404. OPM invites comment on whether similar modifications to the effective date of the FEDVIP would be beneficial.

Under this proposed rule, FEHB coverage could become effective at the beginning of the initial pay period in which the employee with an initial opportunity to enroll meets the criteria of becoming eligible for FEHB coverage, being in pay status, and providing an appropriate request to enroll that is received by the employing office within the initial pay period the employee becomes eligible. If the appropriate request to enroll is not received by the employing office within the initial pay period the employee becomes eligible, then the newly eligible employee still has the remainder of the 60 days to enroll in FEHB. However, the effective date then becomes the first day of the first pay period that begins after the date the employing office receives an appropriate request to enroll or change the enrollment and that follows a pay period during any part of which the employee is in pay status. The following examples illustrate the scenarios described in this paragraph for a new employee entering on duty and for an excluded employee that becomes newly eligible for coverage:

Example 1. The pay period begins on Sunday, August 27, 2023, and runs until Saturday, September 9, 2023. A new employee enters on duty and commences pay status at an agency on Monday, August 28, 2023. The new employee submits an appropriate request to enroll, including family member eligibility documentation, and it is received by the employing office on Tuesday, September 5, 2023, which is within the initial pay period of the employee's initial opportunity to enroll. FEHB coverage for the new employee and their eligible family member(s) would be effective retroactively to Sunday, August 27, 2023.

Example 2. The pay period begins on Sunday, August 27, 2023, and runs until Saturday, September 9, 2023. A new employee enters on duty and commences pay status at an agency on Monday, August 28, 2023. The new employee submits an appropriate request to enroll, including family member eligibility documentation, and it is received by the employing office on Tuesday, September 12, 2023, which is not within the initial pay period of the employee's initial opportunity to enroll. FEHB coverage for the new employee and their eligible family member(s) is effective Sunday, September 24, 2023, which is the first day of the first pay period that begins after the date the employing office receives an appropriate request to enroll.

Example 3: The pay period begins on Sunday, August 27, 2023, and runs until Saturday, September 9, 2023. An employee formerly in a position that was excluded from coverage moves to a position that conveys coverage and is a newly eligible employee in pay status on Monday, August 28, 2023. The newly eligible employee submits an appropriate request to enroll, including family member eligibility documentation, and it is received by the employing office on Tuesday, September 5, 2023, which is within the initial pay period of the newly eligible employee's initial opportunity to enroll. FEHB coverage for the newly eligible employee and their eligible family member(s) would be effective retroactively to Sunday, August 27, 2023.

Example 4: The pay period begins on Sunday, August 27, 2023, and runs until Saturday, September 9, 2023. An employee formerly in a position that was excluded from coverage moves to a position that conveys coverage and is a newly eligible employee in pay status on Monday,

August 28, 2023. The newly eligible employee submits an appropriate request to enroll, including family member eligibility documentation, and it is received by the employing office on Tuesday, September 12, 2023, which is not within the initial pay period of the newly eligible employee's initial opportunity to enroll. FEHB coverage for the newly eligible employee and their eligible family member(s) is effective Sunday, September 24, 2023, which is the first day of the first pay period that begins after the date the employing office receives an appropriate request to enroll.

OPM seeks comment on effectuating the proposed changes, including whether it is preferable to begin coverage effective retroactively to the start of the pay period in which the employee becomes eligible or to begin coverage effective retroactively to the date of entry on duty in pay status or other initial opportunity to enroll.

Employing offices would be required to implement the new requirements when this rulemaking is finalized and have their enrollment and payroll systems accommodate coverage effective retroactive to the start of the initial pay period in which the employee becomes eligible and is in pay status, and the appropriate request to enroll is received by the employing office. While some employing offices have the current system capability to implement this change immediately upon finalization of this rulemaking, others may not. As a result, OPM is allowing additional time for compliance by proposing that all employing offices implement the changes outlined in this rulemaking no later than 18 months after the publication date of the final rule. Those employing offices that can implement sooner are encouraged to do so.

Proposed Changes by Section

OPM proposes to amend the FEHB regulations at 5 CFR 890.301 to permit FEHB coverage to become effective at the beginning of the initial pay period that the employee with an initial opportunity to enroll becomes eligible for FEHB coverage and is in pay status, provided an appropriate request to enroll is received by the employing office within the initial pay period the employee becomes eligible. This proposed rule would redesignate 5 CFR 890.301(b) as

paragraph (b)(1) to allow the addition of a new paragraph (b)(2) that outlines the changes discussed in the previous section. Specifically, paragraph (b)(2) pertains to employees with an initial opportunity to enroll, allowing for FEHB coverage to be effective the same pay period the employee becomes eligible.

Under existing regulations at 5 CFR 890.301(a), an employee with an initial opportunity to enroll may elect to enroll or not to enroll within 60 days after becoming eligible. This rulemaking does not change the eligibility period, and instead proposes that FEHB coverage for employees with an initial opportunity to enroll will be effective retroactively to the start of the initial pay period the employee first becomes eligible and is in pay status if the employee submits, and the employing office receives, the appropriate request to enroll within the initial pay period the employee becomes eligible. If the employee does not submit and the employing office does not receive an appropriate request to enroll within the initial pay period the employee first becomes eligible, then coverage will be effective on the first day of the first pay period that begins after the date the employing office receives an appropriate request to enroll or change the enrollment and that follows a pay period that the employee is in pay status. OPM guidance² directs employing offices to request proof of family member eligibility during the initial opportunity to enroll.

In addition to other aspects of this proposed rule, OPM is requesting information on leading practices from other employers on when health insurance coverage begins. OPM recognizes that employees, during their initial opportunity to enroll, may experience an immediate need for coverage. Additionally, as employees, during their initial opportunity to enroll, weigh and evaluate different plans and coverage options, employees may not be able to make a decision during their first pay period, and may utilize the full enrollment period. OPM specifically invites comments on the effective date of coverage and if that effective date should

² U.S. Office of Personnel Management, Benefits Administration Letter (BAL) 21-202, *Family Member Eligibility Verification for Federal Employees Health Benefits (FEHB) Program Coverage* (available at <https://www.opm.gov/retirement-center/publications-forms/benefits-administration-letters/2021/21-202.pdf>).

be tied to when, during the enrollment period, the election form is submitted and received (i.e., retroactive to the start of the pay period or prospective to the start of the next pay period). If based on responses, OPM determines that it would be advisable to adopt a different approach than that proposed here, OPM anticipates that it would likely issue a revised proposal for comment on specific aspects of implementing the alternate approach.

Expected Impact of Proposed Changes

OPM held stakeholder meetings with agencies and non-governmental entities including Tribal Benefits Officers and FEHB Carriers to solicit feedback on the implications and operational aspects of proposed changes in this rulemaking. While some stakeholders welcomed the proposed changes, others raised operational concerns and the potential cost burdens due to implementation. One potential impact of this rulemaking is the cost employing offices may incur to update enrollment and payroll systems to accommodate the changes. The estimated level of effort for OPM to implement the regulation changes would be about 40 hours of focused work for two GS 15 director level and two GS 14 supervisor level Federal employees to perform system tests and update business processes at an estimated cost of approximately \$22,085 in employee resources³. OPM considered several deadlines as an alternative to the 18-month compliance timeline but settled on the current timeline based on stakeholder feedback received during the rule drafting process. That feedback revealed that agencies use a variety of systems and processes that cannot easily be updated on the same timeline. Therefore, OPM is proposing to ease this burden by delaying the effective date of compliance to 18 months after the final rule is effective. To supplement our analysis and inform our final decision on the compliance date, OPM is seeking comments on the feasibility of implementing changes to the effective date of FEHB coverage, including human resource and payroll system capability to process FEHB

³ The cost of employee resources is calculated using the 2023 GS scale for the Locality Pay Area of Washington-Baltimore-Arlington, DC-MD-VA-WV-PA for GS 15, step 1 (\$74.60 per hour) and GS 14, step 1 (\$63.43 per hour), adjusting each upward by 100% to account for overhead and benefits: $\$74.60 \times 2 \times 40 \times 2 = \$11,936$ and $63.43 \times 2 \times 40 \times 2 = \$10,149$, for a total of \$22,085 in employee costs.

coverage with an effective date as of when the employee becomes eligible (i.e., the day of entry on duty or a change in employment status that results in an employee being newly eligible for FEHB coverage) and the level of effort, estimated cost, and anticipated timeline needed to implement the changes in this rulemaking. OPM also invites comments on the ability of systems to prorate premiums for coverage with an effective date other than the start of a pay period.

While we acknowledge the concerns raised, OPM believes the value of offering FEHB coverage as soon as employees are eligible exceeds the burden of implementing the proposed changes. An expected benefit of this proposed rule is that affected employees will gain access to health insurance plans in a more expedient manner and, therefore, potentially lowering the possibility of uninsured employees personally incurring high-cost medical bills for care received during a gap in health insurance coverage. Federal employees, especially those in positions to be first responders, medical professionals, and representatives on foreign soil, serve a critical need when serving in their position and may be at an increased risk of injury and illness. Having health insurance as soon as they are eligible offers comfort and security. OPM has received stakeholder feedback that the proposed changes have been requested by some new hires and may also have a positive effect in recruiting persons with disabilities to the Federal workforce OPM seeks comments on the implications, positive or negative, on employee recruitment and retention as well as any effects on administrative processing.

Because it is specific to the FEHB Program and a subset of Federal employees and their eligible family members, OPM does not believe this rulemaking will have a large impact on the broader health insurance markets. For many carriers, FEHB generally constitutes a small percentage of business of the overall health insurance carrier's book of business. For the 2024 plan year, the FEHB Program has 67 participating carriers offering a total of 156 plan choices. OPM illustrates the potential impact of the rule under the assumption of 100% participation of the newly eligible employee population and a uniform plan selection for the additional two weeks of coverage that would become available to newly eligible employees as a result of the

proposed rule. Total premiums for 2024 are estimated to be \$64.5 billion which, across all enrollment types (Self, Self Plus One, Self and Family), equates to \$15,851 per subscriber. Assuming bi-weekly pay periods, the added premium cost would be \$610 per employee with an initial opportunity to enroll for an estimated total cost of \$140.2 million per year for the approximately 230,000 newly eligible employees affected by this rulemaking. However, participation may be substantially lower than 100%, for example because individuals may have existing health insurance coverage covering the relevant time period, or newly eligible individuals may choose plans with different average premiums. OPM lacks data to precisely estimate impacts along these lines. However, OPM believes this will be highly utilized, and assumes that the rule will result in effects equivalent to 80% of these potential effects. This implies effects along these lines of approximately \$112.2 million per year. OPM seeks public comment on methods or data to inform these estimates.

Regulatory Review

Executive Orders 13563, 12866, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with effects of \$200 million or more in any one year. This rulemaking does not reach that threshold but has otherwise been designated as a “significant regulatory action” under section 3(f) of Executive Order 12866, as supplemented by Executive Orders 13563 and 14094.

Regulatory Flexibility Act

The Director of OPM certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Federalism

OPM examined this rulemaking in accordance with Executive Order 13132, Federalism, and determined that it will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rulemaking will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This proposed rule involves, but does not make any changes to, an OMB approved collection of information subject to the PRA for the FEHB Program, OMB No. 3206-0160, Health Benefits Election Form. The public reporting burden for this collection is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden hour estimate for this form is 9,000 hours. The system of records notice for this collection is: OPM/Central–23, “FEHB Program Enrollment Records,” available at <https://www.federalregister.gov/d/2021-01259>. Additional information regarding this collection – including all current background materials – can be found at

<https://www.reginfo.gov/public/do/PRAMain> by using the search function to enter either the title of the collection or the OMB Control Number.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

Accordingly, OPM proposes to amend 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.102 also issued under sections 11202(f), 11232(e), and 11246 (b) of Pub. L. 105–33, 111 Stat. 251; Sec. 890.111 also issued under 36 U.S.C. 5522; Sec. 890.112 also issued under 2 U.S.C. 2051; Sec. 890.113 also issued under section 1110 of Pub. L. 116–92, 133 Stat. 1198 (5 U.S.C. 8702 note); Sec. 890.301 also issued under 26 U.S.C. 9801; Sec. 890.302(b) also issued under 42 U.S.C. 300gg–14; Sec. 890.803 also issued under 50 U.S.C. 3516 (formerly 50 U.S.C. 403p) and 22 U.S.C. 4069c and 4069c–1; subpart L also issued under section 599C of Pub. L. 101–513, 104 Stat. 2064 (5 U.S.C. 5561 note); subpart M also issued under 10 U.S.C. 1108 and 25 U.S.C. 1647b; and subpart P issued under 5 U.S.C. 8903c.

Subpart C—Enrollment

2. Amend § 890.301 by:

a. Removing the paragraph heading “*Effective date – generally*” in paragraph (b) and adding in its place “*Effective dates*”;

b. Redesignating paragraph (b) introductory text as paragraph (b)(1); and

c. Adding paragraph (b)(2).

The addition reads as follows:

§ 890.301 Opportunities for employees to enroll or change enrollment; effective dates.

* * * * *

(b) * * *

(1) * * *

(2) Enrollment for an employee will take effect at the beginning of the initial pay period in which the following criteria are met:

- (i) The employee is newly eligible and has an initial opportunity to enroll;
- (ii) The employee is in pay status; and
- (iii) The employee submitted to the employing office, and the employing office received, the appropriate request, as defined in § 890.101, to enroll within the initial pay period of the initial opportunity to enroll.

* * * * *